

ORDINANCE NO. 18 – 01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN
ADDING CHAPTER 163 OF TITLE XV OF THE AUBURN MUNICIPAL
CODE REGARDING ALCOHOL SALES

**THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS
FOLLOWS:**

Section One: Code Adoption. Chapter 163 of Title XV of the Auburn Municipal Code entitled "Alcohol Sales and Deemed Approved Alcohol Sales Regulations" is hereby added as set forth in the attached Exhibit "A".

Section Two: Code Amendment. Section 159.033, subsection (A)(1)(t) and Section 159.034, subsection (B)(46) of Chapter 159 of Title XV of the Auburn Municipal Code are hereby amended to read as follows:

"Liquor stores, subject to the requirements of Chapter 163;"

Section Three: Code Amendment. Section 159.407 of Chapter 159 of Title XV of the Auburn Municipal Code is hereby amended to read as follows:

"The amount of a fee for an application for a use permit shall be established from time to time by resolution of the City Council."

Section Four: California Environmental Quality Act. The City Council has considered all of the evidence in the record, including the staff reports, the testimony received during the meeting on the matter held by the City Council, and hereby determines that the adoption of this Ordinance will not have a significant effect on the environment. This Ordinance is therefore exempt from California Environmental Quality Act (CEQA) review pursuant to California Code of Regulations, title 14, section 15061(b)(3). If

this Ordinance is found subject to CEQA, it is categorically exempt therefrom pursuant to California Code of Regulations, title 14, section 15305 (Minor Alterations in Land Use Limitations); and title 14, section 15321 (Enforcement Actions by Regulatory Agencies).

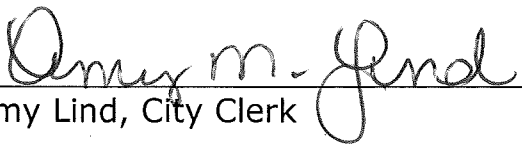
Section Five: Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance or the rules adopted hereby. The City Council of the City of Auburn hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section Six: Publication and Effective Date. This ordinance shall take effect 30 days after final adoption. The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

DATED: January 22, 2018


Bridget Powers, Mayor

ATTEST:


Amy Lind, City Clerk

I, Amy Lind, City Clerk of the City of Auburn, hereby certify that the foregoing ordinance was duly passed at a regular meeting of the City Council of the City of Auburn held on the 22nd day of January, 2018 by the following vote on roll call:

Ayes: Spokely, Berlant, Kirby, Maki, Powers

Noes:

Absent:

Abstain:

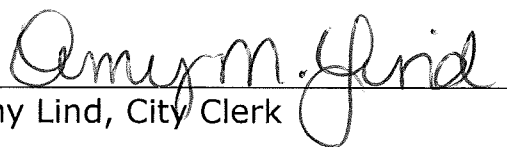

Amy Lind, City Clerk

EXHIBIT "A"

CHAPTER 163 ALCOHOL SALES AND DEEMED APPROVED ALCOHOL SALES REGULATIONS.

Section:

- 163.01 Short Title.
- 163.02 Applicability.
- 163.03 Definitions.
- 163.04 New, modified, or redeveloped off-sale alcohol establishment standards.
- 163.05 Use Permit required.
- 163.06 Distance requirements – applicable to new off-sale alcoholic beverage sales activities.
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- 163.09 Grounds for Use Permit suspension, modification, or revocation.
- 163.10 Investigative procedures of potential violation of conditions of approval and operational standards.
- 163.11 Appeal from suspension, modification or revocation of Use Permit.
- 163.12 Deemed approved alcoholic beverage sales regulations.
- 163.13 Applicability of deemed approved alcoholic beverage sales regulations.
- 163.14 Deemed approved performance standards for off-sale alcohol establishments.
- 163.15 Notification to owners of off-sale establishments conducting deemed approved activities.
- 163.16 Grounds for deemed approved status suspension, revocation or termination.
- 163.17 Investigative procedures of potential violation of performance standards by establishment with deemed approved status.
- 163.18 Appeal from suspension, modification, or revocation of deemed approved status.
- 163.19 Alcoholic beverage sales activity penalties.

163.01 Short title.

This chapter shall be known as the "Alcohol Sales and Deemed Approved Alcohol Sales Regulations Ordinance."

163.02 Applicability.

- (A) The provisions of this chapter shall apply to the extent permissible under other laws to off-sale alcoholic beverage establishments, as defined in this section, located in the City of Auburn that sell alcoholic beverages for off-site consumption.
- (B) Whenever any provision of this chapter, and any other provision of law, whether set forth in these regulations, in an existing Use Permit, or in any other law, ordinance, or regulations of any kind, imposes overlapping or contradictory regulations, or contain restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards shall control, except as otherwise expressly provided in the alcohol sales and deemed approved alcohol sales regulations.

163.03 Definitions.

The meaning and construction of these words and phrases, as set forth below, shall apply throughout this chapter, except where the context clearly indicates a different meaning or construction.

ALCOHOLIC BEVERAGE means alcohol, spirits, liquor, wine, beer, and any liquid or solid containing alcohol, spirits, wine, or beer, that contains one-half of one percent or more of alcohol by volume and that is fit for beverage purposes either alone or when diluted, mixed or combined with other substances, the sale of which requires an ABC license.

ALCOHOLIC BEVERAGE SALES ACTIVITY means the retail sale of alcoholic beverages for off-site consumption.

CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL or **ABC** refers to the department of the state of California empowered to act pursuant to Article 20, section 22, of the California Constitution and authorized to administer the provisions of the Alcoholic Beverage Control Act.

CONDITIONS OF APPROVAL means all requirements that must be carried out by the owners engaged in the activity of: (1) a new alcoholic beverage sales activity to exercise a land use permit; or (2) an existing

permitted, conditionally permitted, or legal nonconforming alcoholic beverage sales activity in order to comply with deemed approved performance standards and to retain its deemed approved status.

DEEMED APPROVED ACTIVITY means any existing permitted or conditionally permitted alcoholic beverage sales activity, or any legal nonconforming alcoholic beverage sales commercial activity (as defined in subsection (J), below). Such activity shall be considered a deemed approved activity effective the effective date of this chapter as long as it complies with the deemed approved performance standards set forth in section 163.14.

DEEMED APPROVED STATUS means the permitted use of land for a deemed approved activity. Deemed approved status replaces permitted and conditionally permitted status (to the extent the establishment is not already required to meet all of the operational standards established in this chapter), and legal nonconforming status for off-sale alcohol establishments with respect to alcoholic beverage sales commercial activity and remains in effect as long as it complies with the deemed approved provisions and performance standards.

ENFORCEMENT OFFICER has the same meaning as **CODE ENFORCEMENT OFFICER** as defined in Auburn Municipal Code section 10.81.

ILLEGAL ACTIVITY means an activity, which has been finally determined to be in noncompliance with local, state or federal laws, the conditions of any applicable permits, or the deemed approved provisions and performance standards in this chapter. Such an activity may lose its deemed approved status and if it does it shall no longer be considered a deemed approved activity.

LEGAL NONCONFORMING ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITY or **LEGAL NONCONFORMING ACTIVITY** means an off-sale alcoholic beverage sales commercial activity for which a valid ABC license had been issued and used in the exercise of the rights and privileges conferred by the license at a time immediately prior to the effective date of this chapter. **A LEGAL NONCONFORMING ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITY** or **LEGAL NONCONFORMING ACTIVITY** includes all beverage sales activities of existing off-sale alcoholic beverage establishments that are not in conformance with the regulations applicable to new off-sale alcoholic beverage establishments contained in this chapter, regardless of whether such activities were allowed as part of a Use Permit granted prior to the effective date of this chapter. Such an activity shall be

considered a deemed approved activity and shall no longer be considered a legal nonconforming activity.

MODIFY or **MODIFIED** means the expansion or increase in intensity or substantial change of a use.

OFF-SALE ALCOHOLIC BEVERAGE ESTABLISHMENT means an establishment that conducts retail sales of alcoholic beverages for consumption off the premises where sold.

OPERATIONAL STANDARDS means regulations for the business practice activities and land use for locations with a Use Permit issued in conformance with the regulations in this chapter on or after the effective date of this chapter or those further requirements imposed on off-sale alcoholic beverage establishments to achieve the purposes of this chapter. Operational standards constitute requirements which must be complied with by an establishment in order to maintain its Use Permit or deemed approved status.

PERFORMANCE STANDARDS means regulations for the business practice activities and land use for locations with deemed approved status, in whole or in part, or those further requirements imposed to achieve the purposes of this chapter. Performance standards constitute requirements which must be complied with by an off-sale alcoholic beverage establishment in order to retain its deemed approved status.

PERMITTED OR CONDITIONALLY PERMITTED ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITY or **PERMITTED OR CONDITIONALLY PERMITTED ACTIVITY** means an off-sale alcoholic beverage sales commercial activity which is a permitted or conditionally permitted activity pursuant to applicable provisions of the Auburn Municipal Code prior to the effective date of this chapter, and for which a valid ABC license has been issued and was used in the exercise of the rights and privileges conferred by the license at a time immediately prior to the effective date of this chapter. **A PERMITTED OR CONDITIONALLY PERMITTED ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITY** or **PERMITTED OR CONDITIONALLY PERMITTED ACTIVITY** includes all alcoholic beverage sales activities of any existing off-sale alcoholic beverage establishment that are not in conformance with the regulations applicable to new off-sale alcoholic beverage establishments contained in this chapter, regardless of whether such activities were allowed as part of a Use Permit granted by the Planning Commission or otherwise allowed as permissible activities associated with the establishment's permitted use, prior to the effective date of this chapter. To the extent that the activity is not in

conformance with this chapter it shall be considered a deemed approved activity.

PREMISES means the actual space in a building devoted to alcoholic beverage sales.

REDEVELOPED means the demolition of an existing off-sale alcoholic beverage establishment (whether conducting permitted or conditionally permitted activities or deemed approved activities) followed by the immediate reconstruction and operation of a replacement off-sale alcoholic beverage establishment.

163.04 New, modified, or redeveloped off-sale alcohol establishment standards.

Except as otherwise provided in this chapter, no person shall establish a new off-sale alcoholic beverage establishment, nor shall any person modify or redevelop an existing off-sale alcoholic beverage establishment, in violation of section 159.246 of this code or an applicable Use Permit without first obtaining a Use Permit in the manner provided by section 163.05. Furthermore, the standards contained in sections 163.04 through 163.08 require new off-sale alcoholic beverage establishments, as defined in section 163.03, to secure a Use Permit in the manner provided in sections 163.05 – 163.11 in order to lawfully engage in the sale of alcoholic beverages from premises located in the City of Auburn; and require such establishments to manage such premises in accordance with the requirements of such permit, including operational standards and any conditions of approval incorporated as conditions of the permit.

163.05 Use Permit required.

All alcoholic beverage establishments to which sections 163.04 – 163.11 are applicable shall obtain a Use Permit pursuant to sections 159.405 – 159.409 of this code and satisfy all pertinent conditions prior to engaging in any alcoholic beverage sales activity.

163.06 Distance requirements – applicable to new off-sale alcoholic beverage sales activities.

- (A) No new off-sale alcoholic beverage establishment shall be located within 600 feet of public or private schools, and parks or playgrounds, except:

A convenience market with a maximum of 10 percent of the retail display area devoted to the sale and display of alcoholic beverages, limited to off-sale beer and wine, non-fortified products only. Retail

display area includes all floor area within the establishment that is accessible and within view of customers, including aisles, and floor area occupied by shelves, counters, and refrigerator coolers.

- (B) For purposes of this subsection, distances shall be measured between the closest property lines of the affected locations.

163.07 Operational standards – applicable to new, modified, or redeveloped off-sale alcoholic beverage sales activities.

- (A) All new, modified, or redeveloped off-sale alcoholic beverage sales activities shall be designed, constructed, and operated to conform to all of the following operational standards:
- (1) That it does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests.
 - (2) Hours of Operation: In an off-sale alcohol establishment, the sale of alcoholic beverages may be restricted to certain hours of each day of the week unless limited further by the ABC.
 - (3) That it complies with all provisions of local, state or federal laws, regulations or orders, including but not limited to those of the ABC, California Business and Professions Code sections 24200, 24200.6, and 25612.5, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders. This includes compliance with annual city business license fees.
 - (4) That its upkeep and operating characteristics are compatible with, and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.
 - (5) That it complies with the following alcohol sale limitations:

- (a) No distilled spirits shall be displayed, sold or given away in containers of less than 375 milliliters, except pre-mixed cocktails.
 - (b) The display, sale or distribution of 50 milliliters "airline bottles" and 375 milliliters "hip flask" containers is prohibited.
 - (c) No sale or distribution of alcoholic beverages shall be made from a drive-up or walk-up window.
 - (d) No wine or wine coolers shall be displayed, sold or given away in containers of less than 750 milliliters, except multipack containers of wine, and multipack wine coolers containing no more than six percent alcohol by volume.
 - (e) No wine shall be displayed, sold or given away with an alcoholic content greater than 15 percent by volume unless in corked bottles and aged at least two years.
 - (f) No single containers of beer, malt liquor, wine cooler, or similar alcoholic beverages shall be offered for sale.
 - (g) No containers of beer, malt liquor, wine cooler, or similar alcoholic beverages shall be offered for sale separately from their original factory packaging of six-pack or greater.
 - (h) No display, sale or distribution of beer, malt liquor, wine, wine coolers, or similar alcoholic beverages shall be made from an ice tub, barrel or similar container.
 - (i) All display of alcoholic beverages shall be no closer than five feet from the store entrance.
- (6) That it complies with the following public nuisance prevention measures:
- (a) No fixtures or furnishings that encourage loitering and nuisance behavior are permitted on the premises. This includes, but is not limited to chairs, seats, stools, benches, tables, crates, etc.

- (b) The establishment's operators or employees shall be required to discourage loiterers and to ask persons loitering longer than fifteen minutes to leave the area and contact local law enforcement officials for enforcement of applicable trespassing and loitering laws if persons requested to leave fail to do so.
 - (c) No video or other electronic games shall be located in an off-sale alcoholic beverage establishment.
 - (d) Mitigating Alcohol Related Problems: The establishment shall be required to operate in a manner appropriate with mitigating alcohol related problems that negatively impact those individuals living or working in the neighborhood including but not limited to sales to minors, the congregation of individuals, violence on or near the premises, drunkenness, public urination, solicitation, drug-dealing, drug use, loud noise, and litter.
 - (e) Drug Paraphernalia: An off-sale alcohol establishment shall be prohibited from selling drug/tobacco paraphernalia products as defined in Health and Safety Code sections 11014.5 and 11364.5. "Drug paraphernalia" means all equipment products and materials of any kind that are used intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the California Uniform Controlled Substances Act commencing with California Health and Safety Code section 11000.
- (7) Signage: There shall be no exterior advertising of alcoholic products, or tobacco and paraphernalia or similarly controlled products.
- (8) Signs: The following signs shall be required to be prominently posted in a readily visible manner on an interior wall or fixture, and not on windows.

- (a) "California State Law prohibits the sale of alcoholic beverages to persons younger than 21 years of age."
 - (b) "No Loitering or Public Drinking."
 - (c) "It is illegal to possess an open container of alcohol in the vicinity of this establishment."
- (9) Presentation of Documents: A copy of the conditions of approval and the ABC license shall be kept on the premises and presented to any enforcement officer or authorized state or county official upon request.
- (10) Window Obstructions: To ensure a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance, no more than 15% of windows and entry doors shall be blocked by signs, vending machines, shelves, racks, storage, etc.
- (11) Training: Each off-sale operator and their employees shall complete the Responsible Beverage Service (RBS) Training component. To satisfy this requirement, a certified program must meet the standards of the Alcohol Beverage Control Responsible Beverage Service Advisory Board or other certifying/licensing body designated by the state of California. Proof of completion shall be retained on site for inspection.
- (12) Security Cameras: At least two high definition 24-hour time lapse security cameras may be required to be installed and properly maintained on the exterior of the building at locations recommended by the police department capable of color recording and storing a minimum of 30 days of continuous video. All criminal and suspicious activities recorded on this surveillance equipment must be reported to local law enforcement. To the extent allowed by law, the establishment operators may be required to provide any tapes or other recording media from the security cameras to the police department.
- (13) Proof of Identification: Every off-sale operator and their employees shall require every customer to provide bona fide evidence of majority and identity as defined in Business and Professions Code section 25660.

- (B) Failure to comply with these requirements shall constitute grounds for revocation of a Use Permit.

163.08 Required findings – new off-sale alcoholic beverage sales activities.

Subject to the operational standards listed in section 163.07, the Planning Commission shall approve issuance of a Use Permit to allow a new off-sale alcoholic beverage sales activity upon making the following findings:

- (A) The proposed establishment meets the locational requirements of section 163.06.
- (B) The proposed alcoholic beverage sales activity will not aggravate existing problems in the neighborhood created by the sale of alcohol such as loitering, public drunkenness, alcoholic beverage sales to minors, noise, and littering.
- (C) The proposed establishment will not detrimentally affect nearby neighborhoods considering the distance of the alcohol establishment to residential buildings, schools, parks, playgrounds or recreational areas, nonprofit youth facilities, places of worship, hospitals, alcohol or other drug abuse recovery or treatment facilities, county social service offices, or other alcoholic beverages sales activity establishments.

163.09 Grounds for Use Permit suspension, modification, or revocation.

- (A) An alcoholic beverage sales establishment's Use Permit may be suspended for up to one year, modified or revoked by the Public Safety Director within 10 days after notice thereof, for failure to comply with operational standards, training requirements or conditions of approval imposed through their Use Permit. The permittee shall have the right to a hearing thereon in the manner described in chapter 162 of this code.
- (B) Any Use Permit issued pursuant to the provisions of section 163.05 shall be subject to the condition, in addition to any and all other conditions, that it shall terminate and cease to apply to any establishment which:
 - (1) Shall have ceased its operation for a period of 180 or more calendar days, and

- (a) If there is thereafter filed any application or requested transaction with the ABC, whereby the laws of the state of California require notice thereof to be filed with the city, and allow the filing of a protest thereon by the city (including person-to-person transfer of existing licenses); or
 - (b) Where after such 180-calendar-day period, the existing license shall have ceased to apply to such establishment; or
- (2) Where the existing license shall have been surrendered to the ABC for a period exceeding 180 calendar days.

163.10 Investigative procedures of potential violation of conditions of approval and operational standards.

Upon the city's receipt of a complaint from the public, police department, city official or any other interested person that a Use Permit activity is in violation of the operational standards, conditions of approval, or performance standards set forth in this chapter, the city shall follow the Administrative Enforcement procedures in sections 10.80 – 10.99.

- (A) An enforcement officer shall assess the nature of the complaint and its validity by conducting an on-site observation and inspection of the premises to assess the activity's compliance with operational standards and/or conditions of approval.
- (B) If the enforcement officer determines that the activity is in violation of the operational standards and/or conditions of approval, the enforcement officer shall give written notice of the violation to the owner and/or operator of the establishment and seek to remedy the violation under the city's administrative citation procedures contained in sections 10.80 – 10.99 of this code. The first notice of violation shall be given in accordance with section 10.83 of this code. If, however, the enforcement officer, in his or her sole discretion, determines that the violation is not capable of correction, presents a serious threat to public health or safety, or otherwise warrants expedited action, he or she may in lieu of following the administrative citation procedure, refer the matter directly to the Public Safety Director, who may suspend, modify, or revoke the establishment's Use Permit. The Director's action under this subsection is subject to appeal under chapter 162 of this code.

- (C) Any administrative citation issued under this section shall be issued, processed, and enforced in compliance with all of the provisions of sections 10.80 – 10.99 of this code, unless otherwise expressly provided by this chapter. If the owner or operator receiving an administrative citation contests the citation and a hearing is held pursuant to sections 10.80 – 10.99, the hearing officer may, in addition to exercising all powers designated in sections 10.80 – 10.99, make a recommendation to the Planning Commission to suspend, modify or revoke the establishment's Use Permit if in the judgment of the hearing officer, based upon information then before him or her, such action is necessary to ensure compliance with this chapter. Such recommendation may include the suggestion of additional or amended reasonable conditions on the use, including but not limited to, the operational standards listed in section 163.07, and the performance standards listed in section 163.14 of this code.
- (D) If an appeal hearing is conducted on a potential violation in the manner prescribed in chapter 162, it shall determine whether the activity is in compliance with the operational standards and/or conditions of approval. Based on this determination, the Planning Commission may suspend, modify or revoke the activity's Use Permit or impose additional or amended conditions on the use, including, but not limited to, the operational standards listed in section 163.07 of this code, based upon the information then before it. In reaching a determination as to whether a use has violated the operational standards or conditions of approval, or as to the appropriateness of suspending, modifying, or revoking of a Use Permit, or the imposition of additional or amended conditions on a use, the Planning Commission may consider the following:
- (1) The length of time the activity has been out of compliance with the operational standards and/or conditions of approval.
 - (2) The impact of the violation of the operational standards and/or conditions of approval on the community.
 - (3) Any information regarding the owner of the activity's efforts to remedy the violation of the operational standards and/or conditions of approval.
- (E) "Efforts to Remedy" shall include, but are not limited to:

- (1) Timely calls to the police department that are placed by the owner and/or operator of the establishment, his or her employees, or agents.
 - (2) Requesting that those persons engaging in activities causing violations of the operational standards and/or conditions of approval cease those activities, unless the owner or operator of the activity, or his or her employees or agents feels that their personal safety would be threatened in making that request.
 - (3) Making improvements to the establishment's property or operations, including but not limited to the installation of lighting sufficient to illuminate the area within the use's property line, the installation of security cameras, the clearing of window obstructions, the cleaning of sidewalks and the abatement of graffiti within three days.
- (F) If in the judgment of the Public Safety Director, the operations of the owner or operator of the establishment constitute a nuisance, the owner or operator is unable or unwilling to abate the nuisance and the nuisance is shown to be a threat to the public health and safety of the surrounding neighborhood, the Public Safety Director may suspend, modify, or revoke the activity's Use Permit. All determinations, decisions, and conditions made or imposed regarding the use of an activity shall run with the land. The Public Safety Director's action under this subsection is subject to appeal under chapter 162 of this code.
- (G) The decision of the Planning Commission shall be final and conclusive, unless appealed as provided in chapter 162 of this code.

163.11 Appeal from suspension, modification or revocation of Use Permit.

Any applicant or other person aggrieved by a decision of the Public Safety Director from a suspension, modification or revocation of a Use Permit pursuant to this chapter may appeal the decision pursuant to chapter 162 of this code.

163.12 Deemed approved alcoholic beverage sales regulations.

Except as otherwise provided in this chapter, any permitted or conditionally permitted off-sale alcoholic beverage establishment and legal nonconforming off-sale alcoholic beverage establishment lawfully operating

prior to the effective date of this chapter pursuant to an ABC license that authorizes the retail sale of alcoholic beverages for off-site consumption shall thereafter be an establishment with deemed approved status, and shall no longer be considered permitted, conditionally permitted or legal nonconforming activities. Such establishment may continue to lawfully operate provided the operation is conducted in compliance with the performance standards contained in section 163.14 and has satisfied the applicable training requirement.

163.13 Applicability of deemed approved alcoholic beverage sales regulations.

The deemed approved alcoholic beverage sales regulations shall apply to all permitted or conditionally permitted off-sale alcoholic beverage sales activities and legal nonconforming alcoholic beverage sales activities for off-site consumption existing and operating within the city on the effective date of this chapter.

163.14 Deemed approved performance standards for off-sale alcohol establishments.

The following performance standards are established to control dangerous or objectionable environmental effects of alcoholic beverage sales activities. These standards shall apply to all deemed approved alcoholic beverage sales activities that hold deemed approved status pursuant to this chapter. An off-sale alcoholic beverage sales activity shall retain its deemed approved status only if it conforms to all of the following deemed approved performance standards:

- (A) The off-sale alcohol establishment shall not cause adverse effects to the health, peace or safety of persons residing or working in the surrounding area.
- (B) The off-sale alcohol establishment shall not jeopardize or endanger the public health or safety of persons residing or working in the surrounding area.
- (C) The off-sale alcohol establishment shall not allow repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, or lewd conduct.

- (D) The off-sale alcohol establishment shall comply with all provisions of local, state or federal laws, regulations or orders, including but not limited to those of the ABC, California Business and Professions Code sections 24200, 24200.6, and 25612.5, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders. This includes compliance with annual city business license fees.
- (E) The off-sale alcohol establishment's upkeep and operating characteristics shall be compatible with and not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.
- (F) The owners and all employees of the alcohol beverage sales establishment involved in the sale of alcoholic beverages shall complete an approved course in "Responsible Beverage Sales" (RBS) within 60 days of hire for employees hired after the passage of this ordinance or within six months of the passage of this ordinance for existing employees. To satisfy this requirement, a certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service (CCC/RBS) or other certifying/licensing body designated by the state of California.

163.15 Notification to owners of off-sale establishments conducting deemed approved activities.

The city's Public Safety Department shall, within 30 days of the effective date of this Ordinance, notify the owner and/or operator of all deemed approved off-sale alcohol establishments. The notice shall be sent by first-class mail and certified mail return receipt requested and shall include a copy of the performance standards in this chapter. The performance standards shall be posted in a conspicuous and unobstructed place visible from the entrance of the establishment for public review.

163.16 Grounds for deemed approved status suspension, revocation or termination.

- (A) An alcoholic beverage sales establishment's deemed approved status may be suspended for up to one year, modified or revoked by the Public Safety Director within 10 days after notice thereof, for failure to comply with operational standards, training requirements or conditions of approval imposed through their Use Permit. The permittee shall have the right to an appeal pursuant to chapter 162 of this code.

- (B) The occurrence of any of the following shall terminate the deemed approved status of the alcoholic beverage sales activity after notice and a hearing in front of the Council in accordance with chapter 162 of this code, and require the issuance of a Use Permit in order to continue the alcoholic beverage sales activity:
- (1) An existing alcoholic beverage sales activity changes its activity so that ABC requires a different type of license.
 - (2) There is a substantial modification to the mode or character of operation.
 - (3) As used herein, the phrase "substantial modification to the mode or character of operation" includes but is not be limited to the following:
 - (a) The off-sale alcoholic beverage sales activity establishment increases the floor or land area or shelf space devoted to the display or sales of any alcoholic beverage.
 - (b) The off-sale alcoholic beverage sales activity establishment extends the hours of operation.
 - (c) The off-sale alcoholic beverage sales activity establishment proposes to reinstate alcohol sales after the ABC license has been either revoked or suspended for a period 180 days or greater by ABC.
 - (d) The off-sale alcoholic beverage sales activity voluntarily discontinues active operation for more than 180 consecutive days or ceases to be licensed by the ABC.
 - (4) A "substantial change in the mode of character of operation" shall not include:
 - (a) Re-establishment, restoration or repair of an existing off-sale alcoholic beverage sales activity on the same premises after the premises have been rendered totally or partially inaccessible by a riot, insurrection, toxic accident or act of God, provided that the re-establishment, restoration or repair does not extend the hours of operation of any establishment or add to the capacity, floor or land area or shelf space devoted to alcoholic beverages of any establishment

that sells any alcoholic beverages for off-site consumption.

- (b) Temporary closure for not more than 180 days in cases of vacation or illness or for purposes of repair, renovation, or remodeling if that repair, renovation, or remodeling does not change the nature of the premises and does not extend the hours of operation of any establishment, or add to the capacity, floor or land area, or shelf space devoted to alcoholic beverages of any establishment that sells any alcoholic beverages for off-site consumption, provided notice is provided to the city. The CDD Planning Commission may, upon request of an owner of an alcoholic beverage sales establishment made prior to the expiration of 180 days, grant one or more extensions to the period of temporary closure, none of which may exceed 60 days, and together not to exceed 180 days.
- (5) Once it is determined by the city that there has been a discontinuance of active operation for 180 consecutive days or a cessation of ABC licensing, it may be resumed only upon the granting of a Use Permit as provided in 163.05 of this code. In the event that any active operation is discontinued on a property for a period of 180 consecutive days, such discontinuance shall be presumed to be abandonment of the use by the property owner. At any time after any active operation is discontinued for a period of 180 consecutive days or more, the Public Safety Director, or his or her designee shall notify the property owner in writing of the determination of presumed abandonment of the active operation. Pursuant to chapter 162 of this title, the property owner may appeal the determination to the Public Safety Director, which may overturn the determination only upon making a finding that the evidence supports the property owner's position that the nonconforming use was not discontinued for a period of 180 consecutive days or more. The property owner shall be notified by the city of the termination of the deemed approved status and shall be informed of the property owner's right to appeal the decision.

163.17 Investigative procedures of potential violation of performance standards by establishment with deemed approved status.

Upon the city's receipt of a complaint from the public, police department, city official or any other interested person that a deemed approved use is in violation of the performance standards set forth in this chapter, the following procedure shall be followed:

- (A) An enforcement officer shall assess the nature of the complaint and its validity by conducting an on-site observation and inspection of the premises to assess the activity's compliance with performance standards.
- (B) If the enforcement officer determines that the deemed approved activity is in violation of the performance standards, the enforcement officer shall give written notice of the violation to the owner and/or operator of the establishment and seek to remedy the violation under the city's administrative citation procedures contained in sections 10.80 – 10.99 of this code. The first notice of violation shall be given in accordance with section 10.83 of this code. If, however, the enforcement officer, in his or her sole discretion, determines that the violation is not capable of correction, presents a serious threat to public health or safety, or otherwise warrants expedited action, he or she may in lieu of following the administrative citation procedure, refer the matter directly to the Public Safety Director, who may suspend, modify, or revoke deemed approved activity's deemed approved status.
- (C) Any administrative citation issued under this section shall be issued, processed, and enforced in compliance with all of the provisions of sections 10.80 – 10.99 of this code, unless otherwise expressly provided by this chapter. If, the owner or operator receiving an administrative citation contests the citation and a hearing is held pursuant to sections 10.80 – 10.99, the hearing officer may, in addition to exercising all powers designated in sections 10.80 – 10.99, make a recommendation to the Public Safety Director to suspend, modify or revoke the deemed approved activity's deemed approved status if in the judgment of the hearing officer, based upon information then before him or her, such action is necessary to ensure compliance with this chapter. Such recommendation may include the suggestion of additional or amended reasonable conditions on the use, including but not limited to, the operational standards listed in section 163.07 and the performance standards listed in section 163.14 of this code.

(D) If the enforcement officer refers the matter directly to the Public Safety Director, the Public Safety Director may determine whether the deemed approved activity is in compliance with the performance standards. Based on this determination, the Public Safety Director may suspend, modify or revoke the deemed approved activity's deemed approved status or impose additional or amended conditions on the use, including but not limited to the operational standards listed in Section 163.07 of this code, based on information then before it. In reaching a determination as to whether a use has violated the performance standards, or as to the appropriateness of suspending, modifying or revoking a deemed approved activity's deemed approved status, or imposing additional or amended conditions on the use, the Public Safety Director may consider:

- (1) The length of time the deemed approved activity has been out of compliance with the performance standards.
- (2) The impact of the violation of the performance standard(s) on the community.
- (3) Any information regarding the owner of the deemed approved activity's efforts to remedy the violation of the performance standard(s).

(E) "Efforts to Remedy" shall include, but are not limited to:

- (1) Timely calls to the police department that are placed by the owner and/or operator of the deemed approved activity, his or her employees, or agents.
- (2) Requesting that those persons engaging in activities causing violations of the performance standard(s) cease those activities, unless the owner of the deemed approved activity, or his or her employees or agents feels that their personal safety would be threatened in making that request.
- (3) Making improvements to the deemed approved activity's property or operations, including but not limited to the installation of lighting sufficient to illuminate the area within the use's property line, the installation of security cameras, clear unobstructed

windows, clean sidewalks and graffiti abated within three days.

- (F) If in the judgment of the Public Safety Director, the operations of the owner or operator of the deemed approved activity constitute a nuisance, the owner is unable or unwilling to abate the nuisance and the nuisance is shown to be a threat to the public health and safety of the surrounding neighborhood, the Public Safety Director may suspend, modify or revoke the activity's deemed approved status. If suspended, any continued operation of the business shall require a Use Permit approved by the Planning Commission. All determinations, decisions, and conditions made or imposed regarding the use of a deemed approved activity shall run with the land.
- (G) The decision of the Planning Commission shall be final and conclusive, unless appealed in accordance with the provisions of chapter 162 of this title.
- (H) All hearings held pursuant to this section shall be conducted in the manner set forth in chapter 162 of this code.

163.18 Appeal from suspension, modification, or revocation of deemed approved status.

Any applicant or other person aggrieved by a decision of the Planning Commission from a suspension, modification or revocation of an establishment's deemed approved status pursuant to this chapter may appeal the decision to the City Council pursuant to section 162.06 of this code. All hearings held pursuant to this section shall be conducted in the manner set forth in chapter 162 of this code.

163.19 Alcoholic beverage sales activity penalties.

- (A) Any person violating any of the provisions of this chapter or who causes or permits another person to violate any provision of this chapter may be charged with either an infraction or a misdemeanor, and shall be subject to the provisions of the penalty clause as set forth in section 10.99 of this code.
- (B) In addition to the penalties provided in this section, any use or condition caused or permitted to exist in violation of any of the provisions of these regulations shall be and is declared to be a public nuisance and may be abated as such by the city.

- (C) Nothing in this chapter shall be construed to prevent the City of Auburn from pursuing any and all other legal remedies that may be available, including but not limited to civil actions filed by the city attorney seeking any and all appropriate relief such as civil injunctions and penalties.
- (D) Notwithstanding section 10.99 Penalty, sections 95.25 -95.99 Nuisance Abatement, sections 10.80 - 10.99 Administrative Enforcement, or any other section of this code to the contrary, any person, entity, or organization that violates the provisions of this chapter may be subject to civil penalties up to \$1,000 for each day said violation is in existence.
- (E) Any violator shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of these regulations is committed, continued, permitted, or caused by such violator and shall be punishable accordingly.
- (F) In addition to the punishment provided by law a violator is liable for such costs expenses and disbursements paid or incurred by the city or any of its contractors in correction, abatement and prosecution of the violation. Re-inspection fees to ascertain compliance with previously noticed or cited violations may be charged against the owner of the establishment conducting the deemed approved activity or owner of the property where the establishment is located. The enforcement officer shall give the owner or other responsible party of such affected premises a written notice showing the itemized cost of such chargeable service and requesting payment thereof. Should the bill not be paid in the required time, the charges shall be placed as a lien against the property.